Mr. K. Chengalaraya Reddy.—

Has not the matter been under consideration for very long?

Secretary to Government, Development Department.—

The District Board's resolution was received only in January and the matter is likely to be disposed of as early as possible.

GOVERNMENT BUSINESS—(*Concluded*).

IV. The Mysore Extradition Bill—(*concld.*).

Khan Bahadur MAHOMED ABBAS KHAN explained that under the existing law, whenever a warrant was issued by a British Indian Magistrate for the surrender of a fugitive criminal, it had to be acted upon by the Mysore Magistrate as if it were a warrant issued by himself, and the fugitive surrendered. This practice was automatically going on for a long time, but there was no guarantee that all the offences for which warrants were issued from British India were extraditable either under the British Indian law or under the law in Mysore. It was not known whether the Mysore Government knew all the places where such warrants had been executed within the State. In a recent case which went up before the Full Bench of the High Court of Mysore, it was held that the British Indian Magistrate's warrant was not in accordance with the law and that in such ordinary cases, the Mysore Magistrates need not execute the warrants issued by the British Indian Magistrates. To give effect to that decision and remove anomalies and inconveniences resulting from the present procedure, the Bill under discussion had been brought up.

Under the proposed arrangement, the British Indian authorities would have to apply to the Mysore Government for the surrender of a fugitive criminal, and before surrendering him, the Mysore Government should satisfy themselves that a *prima facie* case had been made out in favour of the surrender. For this purpose, the nature of the offences, which alone would come under extraditable offences, was proposed to be defined. If the Government thought that a particular application for the surrender of a fugitive was in respect of a serious enough offence, they would forward the application to the District Magistrate who would hold an

enquiry at which a representative of the British Indian court making the application, as well as the offender concerned, would have every opportunity of adducing evidence for and against the surrender. If a *prima facie* case was made out in favour of the warrant, the Magistrate would report the case to Government who would then order that the person concerned need be surrendered. The same procedure would be followed by British Indian Magistrates also in the case of applications made by the Mysore Government for the surrender of fugitives residing within the jurisdiction of the former. This was a fair understanding and from this point of view, the Bill deserved the support.

As regards Chapter II, he said that it dealt only with the surrender of criminals to sister States which had entered into reciprocal arrangements with Mysore. But the Bill was silent on the question of procedure to be followed in respect of States which had not entered into such arrangement with Mysore.

THE FIRST MEMBER OF COUNCIL replied that the Government had nothing to do with such States. Government would neither forward extradition warrants to them nor respect their warrants.

Khan Bahadur MAHOMED ABBAS KHAN felt that it was necessary to provide for such cases also on the lines of the Indian Extradition Act of 1903, and he requested the Government to take action accordingly to the extent possible.

Viewing the measure as a whole, however, he commended the action of Government in proposing to exercise a new power in respect of surrendering their subjects, and welcomed the Bill for that reason.

MR. S. K. VENKATARANGIENGAR said that though this was a very welcome measure, there were a few provisions which required to be modified from the point of prestige of the State and the self-respect of its subjects. Though this Bill was said to be modelled on the Indian Extradition Act of 1903, he found many points of difference between the two. For example, even if the British Indian Magistrates did not send all the records of their enquiry and evidence along with the requisition, the warrant would be executed here and the accused person surrendered. In other words, there was nothing to insist that those records should invariably accompany each and every application for surrender. On the other hand, if a British Indian subject committed an offence in Mysore and took refuge into British Indian borders, the

Mysore Magistrate would have to hold a preliminary enquiry even though the offence was obviously extraditable and forward the records along with the application to the Hon'ble the Resident; and the Resident would forward the application to the concerned British Indian Magistrate only if he was satisfied that the offence itself was extraditable and that a *prima facie* case had been made out for the surrender. Thus an *inferiority complex* was implied in this difference in procedure for which he saw no reason.

THE FIRST MEMBER OF COUNCIL assured the member that the procedure in Mysore would be just the same as in British India and there was absolutely no idea of surrendering any person without following a procedure quite similar to that followed by British Indian administrations. The intention was to put Mysore subjects on exactly the same footing as those of British India and it was in that spirit that the Bill was framed; and he added that under the rule-making power, all the detailed procedure would be prescribed.

MR. VENKATARANGIENGAR next raised an objection in respect of Section 23 of the Bill, under which even though an application from a British Indian administration related to a non-extraditable offence, power was reserved to His Highness the Maharaja of surrendering any of his subjects if he chose to do so. Granting that this was a royal prerogative, he felt that there was no need to provide for it in the Regulation. The question how far the Ruler had such a prerogative had been discussed at length in both eastern and western countries in the past and the dictum that "The King could do no wrong" had been acknowledged everywhere. At the same time, in construing the phrase that "The King could do no wrong," celebrated writers and commentators on constitutional law were agreed that even a Ruler could not sacrifice the fundamental right and the birthrights of his subjects even by means of treaties or agreements. The same view was shared by the Mysore High Court in their decision that treaties should be applied only to extraditable offences. Like air and water, no birthrights could be denied to a subject either by his government or by his ruler. It was therefore a matter for regret that Section 23 sought to sacrifice a birthright of the subject of the State.

It was stated in the statement of objects and reasons that Section 23 had been put in order to implement Article 15 of the Mysore Treaty. But in the civil courts' opinion, Article 15 did not authorise the Resident to demand the surrender of a

person accused of an offence even though the same was non-extraditable. For, the word used in the clause was "may" which had been interpreted by the Madras High Court in another connection as meaning "had the power to." In view of Section 188 of the Mysore Criminal Procedure Code, which had also received the sanction of the Governor-General and which maintained the difference between extraditable and non-extraditable offences, Article 15 of the Treaty could be interpreted to mean that the Resident had power to demand the surrender only in extraditable offences.

THE FIRST MEMBER OF COUNCIL reminded the speaker that the Assembly was not legislating for the British Resident.

THE MEMBER replied that he was justified in making a reference to it because Article 15 of the Treaty, on which Section 23 of the Bill was based, would go more to favour the subjects of the State even if His Highness the Maharaja were inclined to exercise the prerogative mentioned in that section. If this was so, he said, the reference to Article 15 of the Treaty in clause 23 would not arise at all.

THE SECOND MEMBER OF COUNCIL pointed out that that section did not seek to enlarge Article 15 of the Treaty but merely preserved an existing right of the Ruler to direct the extradition of any subject of Mysore.

MR. VENKATARANGIENGAR contended that while the Government were anxious to preserve the rights of the subjects and define their status as being on an equal footing with British Indian subjects, under clause 23, they were giving up that position by declaring the prerogative of the Ruler. As already stated, even the Ruler could not barter away the birthrights of the subjects. One such birthright was that they should not be surrendered in the case of non-extraditable offences. That was how judicial decisions construed it and that was also how constitution-writers had laid down as a dictum which had been accepted and followed by all courts of law. If that was the accepted code and the judicial interpretation of the State's own highest tribunal, it was up to the Government to respect the judicial interpretation of the High Court, following as it did the dicta of constitution-writers and other decisions.

THE FIRST MEMBER OF COUNCIL also reminded the speaker that laws were made not to give effect to judicial decisions but to be carried out by courts of law.

MR. VENKATARANGIENGAR replied by saying that laws should not be made so as to over-weigh and over-rule judicial decisions.

THE FIRST MEMBER OF COUNCIL thought that even that might become necessary sometimes. Apart from that, he was not prepared to admit that there was a decision of the Mysore High Court about the matter under reference at all. He was not aware that any question relating to the prerogative of the Sovereign had ever cropped up before the High Court.

MR. VENKATARANGIENGAR stated that there were a series of references to it in several paragraphs of the judgment of the High Court.

THE FIRST MEMBER OF COUNCIL remarked that all those references did not amount to a judicial decision.

MR. VENKATARANGIENGAR observed that they were however being quoted with approval.

At this stage, the FIRST MEMBER OF COUNCIL pointed out that the speaker was wrong in discussing at such length the question of the prerogative of the Sovereign. It had to be recognized by one and all finally and definitely that the Sovereign had the right to expel any one from the State if he considered it necessary to do so in the interests of the State.

MR. VENKATARANGIENGAR assured the House that it was not his intention to discuss the question of the prerogative of the Ruler but only to object to its being mentioned in the Regulation.

THE FIRST MEMBER OF COUNCIL emphasized that, whether or not the member granted the fact, that prerogative did exist even if it was not mentioned in the Regulation.

While admitting that His Highness the Maharaja was outside and above all laws and was the fountain-head of all law, MR. VENKATARANGIENGAR was of opinion that the question that whether it existed or not must be left to the courts for decision.

THE FIRST MEMBER OF COUNCIL refuted the position that it was a matter to be left to courts of law. The Legislative Council Regulation laid down that His Highness the Maharaja could make any Regulation in order that nobody might think that by implication that power had been given up by the Sovereign. Similarly, clause 23 was inserted in order that nobody might think that the Sovereign had divested himself completely of powers other than those mentioned in the remaining sections of the Bill. In the opinion of Government, it was necessary to have a clause like that in order to assert His Highness' prerogative. Thus he made it clear that there was no use discussing the question any further.

MR. VENKATARANGIENGAR held that the issue whether a subject could be surrendered to another Government should be left for decision by the courts and that the enactment of a law as proposed would be a reflection on the law courts, which, after all, were being maintained by His Highness.

At this stage, the DEWAN pointed out that there was no use pursuing the subject any further. There were certain matters which had to be placed beyond the shadow of a doubt and this was one such matter. That was the main object of including the provision in the Bill.

MR. VENKATARANGIENGAR again represented that Section 23 interfered with the fundamental rights of the citizen and that this fact had been noticed in the judicial decisions. He thought that the Ruler who was himself interested in safeguarding the rights and liberties of his subjects would not like any such declaration of powers on his behalf. If His Highness had the prerogative, it could be exercised even though it was not specified in the Regulation. For, after all, the courts would decide in accordance with the law. The best way of avoiding all doubts and discussions on it was to omit it from the Bill. Its retention, he feared, would give room for unnecessary complications.

In conclusion, he said that Government should do everything necessary to establish perfect equality of rights as between Mysore and British Indian subjects and that as the retention of Section 23 might lead to difficulties of various kinds in future, it should be deleted from the Bill under discussion. Subject to that one change, he lent his whole-hearted support to the measure.

MR. K. T. BHASHYAM AIYANGAR, who spoke next, pointed out that there was difference in the extradition procedure as between Mysore and other States and as between Mysore and British India. In the case of extradition of criminals from Mysore to other States, a Mysore Magistrate was required to hold an enquiry and find out whether a *prima facie* case had been made out and on his report the Government would issue a warrant for the surrender of the fugitive criminal. If in the opinion of the Magistrate the fugitive had not committed any offence, the warrant of extradition issued by the other State would not be executed. But, the procedure in the case of extradition between Mysore and British India was somewhat different. If a warrant was issued by a British Indian Magistrate for the surrender of a fugitive criminal, it had to be acted upon by the Mysore Magistrate as if it were a warrant issued by himself and the

fugitive surrendered. Thus there would be no enquiry by the Mysore Magistrate. If the Government thought that the fugitive was an offender, that was sufficient. He therefore suggested that the same procedure might be adopted in respect of warrants from British India also as in the case of warrants from other Indian States.

THE FIRST MEMBER OF COUNCIL pointed out that whatever procedure existed between British India and Indian States also existed as between Mysore and British Indian provinces. Preliminary enquiry by a British Indian Magistrate was necessary in every case. Thus a magisterial enquiry would have taken place either in Mysore or in British India.

MR. BHASHYAM AIYANGAR enquired whether the same thing could not be said in the case of warrants from other Indian States also.

THE FIRST MEMBER OF COUNCIL replied that it was so; but even then, advisedly the Government desired to have another magisterial enquiry held here, as a matter of additional safety, since it was not known whether the laws and procedure existing in other States were quite similar to those of Mysore. There was no such uncertainty in the case of British India. It was definitely known that their laws and procedure were similar to those of Mysore.

MR. BHASHYAM AIYANGAR was of the opinion that Mysore Government should go a step further and that warrants issued by British Indian Magistrates should also be sent to a Mysore Magistrate who should hold an enquiry and satisfy himself that a *prima facie* case had been made out and that the surrender of a fugitive was justified. If that was done, the offender would have the satisfaction of being heard by a court of his own State and could let in any evidence he liked and also cross-examine the prosecution.

THE FIRST MEMBER OF COUNCIL pointed out that the object of the Bill was to establish reciprocity and equality which did not exist at present. If members of the House aspired for anything more than that, it would not be practicable.

MR. BHASHYAM AIYANGAR said that he could not agree to the surrender of a Mysore subject to foreign administrations merely upon opinions formed by the Executive.

THE FIRST MEMBER OF COUNCIL replied that even Government's opinions would be based on magisterial enquiries and not upon their inner consciousness.

MR. BHASHYAM AIYANGAR then enquired whether at least an appeal could be preferred against such a magisterial enquiry.

THE FIRST MEMBER OF COUNCIL replied that there could be no provision for appeal. It was purely a preliminary enquiry at which the accused might not even be present. It would be held just in order that Government might satisfy themselves that a *prima facie* case was made out. So there was no conviction of the person. It was not the same as saying that the person was really guilty.

MR. BHASHYAM AIYANGAR, however, pressed that as in the case of surrender of fugitives to other States, a regular magisterial enquiry should be held before a subject of Mysore was surrendered to British India. The main point to be considered was that confidence should be created in the mind of the public.

Next, as regards the prerogative of His Highness to direct the extradition of any criminal, the speaker said that no one desired to discuss His Highness' rights; every member of the House was determined to submit to those rights with respect and pleasure. At the same time, since that particular point had been introduced in the statement of the general principles by the Government themselves, he would be failing in his duty if he did not express his own opinion in the matter. According to international jurisprudence, no Ruler of a State had an inherent right or prerogative to surrender his subject to any other State. It was a recognised canon all over the world that no Sovereign could hand over or banish any of his own subjects to outside territories.

THE FIRST MEMBER OF COUNCIL remarked that what the member said was neither law nor common sense.

MR. K. T. BHASHYAM AIYANGAR replied that common sense, as Bromwell once observed, was the most uncommon thing in the world and it was illustrated in the present discussions. Common sense, he said, was what a particular person thought as such. So far as the speaker himself was concerned, his contention was not merely *common* sense but *sound* sense. The only sensible and reasonable view that any one could take upon the issue was that a Sovereign had a right to expect the allegiance of his subject only so long as the protection of the subject was safeguarded and secured, no more, no less. This, he said, was an elementary proposition of international law.

There was yet another point to be considered. The Government had said that in order to be in accordance with Article 15 of the Treaty, Section 23 of the Bill had been proposed. To that he would only reply by saying that

instead of making a new provision to suit that portion of the Treaty, Government should do everything in their power to see that the Article itself was abrogated. For, that would maintain the self-respect of the subjects of Mysore and nothing was so precious to them as self-respect. Mysore citizenship would not be worth the while of anybody, if he felt himself so insecure as to be taken by or be handed over to a foreign policeman by a mere royal fiat.

With these two reservations, the speaker supported the Bill.

MR. C. N. NARASINGA RAO, speaking next, observed that it was indeed a red letter day in the annals of the Representative Assembly when Government had brought forward a most important Bill relating to the rights and privileges of the subjects of the State. The present practice governing the extradition of fugitives from Mysore to British India was governed not by a statute but by a mere notification issued by the Chief Commissioner so long ago as 1878. Therefore, Mysore was not on a par with British India so far as extradition was concerned and the measure under reference was designed to raise the State from its present inferior position. But there were one or two points to be considered. If the State administration desired the surrender of a fugitive from British India, they had to send a requisition to the British Resident together with the particulars of the offence, the whereabouts of the accused and also the records of the enquiry held by the Mysore Magistrate, in which a *prima facie* case has been made out against the accused, and the Resident would issue a warrant for the arrest of the fugitive only after satisfying himself that a *prima facie* case had really been made out. Not only that. The Resident had also the privilege of satisfying himself that the accused had a fair trial at the hands of the Mysore Magistrate and that the punishment meted out was not excessive or barbarous, and if he thought the punishment was excessive or barbarous, he could ask that the accused be sent back so that he might be tried afresh by a British Indian Magistrate. This was a thing, the speaker said, which was most disgraceful and would nullify the very object of the measure, namely, to establish equality of status as between the subjects of Mysore and those of British Indian Administration. Continuing, the member observed that it would be a very welcome thing, if Government succeeded in establishing the same reciprocity between Mysore and other Indian States.

Next, he said that the reference in the Bill to the

prerogative of His Highness was unnecessary. If there was a prerogative, it needed no reiteration. Even without Section 23, the Bill would be just as well and complete. If it was deleted, it did not mean that every existing right of His Highness would be taken away.

THE FIRST MEMBER OF COUNCIL pointed out that, as could be seen from the preamble of the Bill, the proposed Bill was a consolidating measure. It should be framed so as not to leave any room for the contention that nothing could be done in the matter of extradition and rendition of criminals outside the corners of the Regulation and from that point of view Section 23 was necessary.

MR. NARASINGA RAO again stressed the point that if it was granted that the Ruler was above law, there would be absolutely no necessity to mention any of his rights in the Bill. If Section 23 was included as proposed, it would nullify all the other sections of the Bill. All those sections stipulated that a surrender should be done only under certain conditions and in accordance with a certain procedure; but the last section sought to set at rest all those conditions and procedure by providing that notwithstanding anything contained in the previous sections of the Regulation, the right of His Highness to surrender any subject was declared and recognized. Thus, Section 23 seemed to be inconsistent with all the other sections, and unless it was deleted, he feared that references to His Highness' name and rights might unnecessarily arise every time questions of extradition came up. If the section was deleted, he said, the House would unanimously accept the Bill.

MR. M. A. GOPALASWAMI IYENGAR thought that although its principles were welcome, the Bill required modifications in certain respects. For instance, the First Member of Council had observed that the Regulation was a consolidating one and yet the Chief Commissioner's Notifications in regard to extradition proceedings were not proposed to be repealed altogether. A residuum would still be left and there might be instances, for example, not relating to extradition offences at all but in which summonses for attendance of witnesses might be issued by British Indian Magistrates and the Mysore Government would be bound to execute them. In this view if Section 22 was amended, the preamble to the Regulation would be all right.

THE FIRST MEMBER OF COUNCIL replied that that was a matter of detail which could be considered in the select committee. In his opinion this would not affect in any way

the statement of the general principles of the Bill which the House was considering.

MR. GOPALASWAMI IYENGAR thanked the Government for promising to consider this point in the select committee. He next proceeded to the question of making the Regulation applicable to those States with which Mysore would enter into an arrangement with regard to extradition. The point for consideration in this connection would be whether the arrangement entered into with other States was included in the constitutional law of this Government or had only crept into its municipal law, in which case the question as to how far the courts of law should follow the procedure prescribed in the Regulation would naturally arise, because there might be points of conflict as between the two.

THE FIRST MEMBER OF COUNCIL replied that there would be no conflict. As far as the courts were concerned, they would execute the law as it existed.

MR. GOPALASWAMI IYENGAR pointed out that the British Indian Act specifically stated that nothing therein contained abrogated any treaty entered into. So, treaties were supreme as against Regulations and the procedure prescribed in Regulations could not be followed when treaties stipulated otherwise.

THE FIRST MEMBER OF COUNCIL replied that so far as Mysore was concerned, there was no treaty with other States nor would any such question arise.

MR. GOPALASWAMI IYENGAR observed that, in that case, every arrangement with other States would have to be under this Regulation.

THE FIRST MEMBER OF COUNCIL pointed out that an arrangement might be made with other States only as regards particular offences and not all offences.

MR. GOPALASWAMI IYENGAR said that in that case it must be specified in the Regulation.

THE FIRST MEMBER OF COUNCIL replied that it was not necessary. Any arrangement, whatever it be, would be given effect to only in the manner laid down in Section 4 and the succeeding sections.

MR. GOPALASWAMI IYENGAR observed that it had not been stated in the clause that the *terms* of the arrangement should be given effect to. All that was stated was that, when there was an arrangement, this Regulation would apply. It might not answer all cases because treaties were made by the Executive.

THE FIRST MEMBER OF COUNCIL replied that the procedure to be followed could only be in accordance with this Regulation and that no arrangement could be made in opposition to the Regulation. It should be remembered that any arrangement made in contravention of the existing law would be invalid.

MR. GOPALASWAMI IYENGAR replied that it was for that very reason that he wanted that the acts of the Executive and those of the Legislature should be harmonised. British India had done it and he did not know why Mysore should not also do it.

THE FIRST MEMBER OF COUNCIL replied that if there was any difficulty about that, it might be considered in the select committee.

MR. GOPALASWAMI IYENGAR next pointed out that the provision relating to the power of making requisitions either "by or on behalf of the Government" in clause 5 (i) might result in a delegation of the power to anybody that a foreign government liked. If so, it would be both dangerous and undesirable. If it was so provided merely because requisitions from other governments came through the British Resident, it might as well be specified in the Regulation.

THE FIRST MEMBER OF COUNCIL replied that Government did not want to drag in the name of the British Resident in their Regulation, nor would they be right in doing so. They also did not want to legislate for the Resident in it.

MR. GOPALASWAMI IYENGAR agreed with that position. But his only fear was that a foreign government might delegate its power to anybody and everybody. For this reason, those words might be deleted in Section 5 (i) as well as in Section 8 (i).

THE FIRST MEMBER OF COUNCIL replied that, after all, it was this Government who would judge whether a requisition should be complied with or not.

Proceeding, MR. GOPALASWAMI IYENGAR observed that no provision had been made in Section 8 in regard to the extradition of persons who committed extraditable offences outside India and escaped into Mysore territory. He was not sure of the provisions to be made in regard to such cases. He only referred to cases of that kind because the measure proposed was sought to be a consolidating Regulation.

THE FIRST MEMBER OF COUNCIL replied that there were difficulties in regard to that. First, mutual arrangements

would have to be made with countries outside India and for that there was no proper machinery just at present by which surrender could be secured.

MR. GOPALASWAMI IYENGAR pointed out that the English Act provided for that also by means of Orders in Council, and suggested that some such section might be put in in this Bill also.

THE FIRST MEMBER OF COUNCIL replied that he would look into the suggestion.

Proceeding further, MR. GOPALASWAMI IYENGAR referred to Section 23 and observed that the "birthright" referred to by some of the previous speakers had not been defined in any law. It was a word used only in political philosophy. Every government had the right to surrender to another country any person charged with extraditable offence. Only, the procedure differed in different places. What was usually done was that the extradition law was defined under a Regulation authorizing such procedure. Section 23 stated that if any necessity arose, even contrary to this procedure, His Highness' special right might be exercised. The High Court Full Bench decision had observed that His Highness was the source of all law in Mysore and therefore even a treaty might be considered as part of the municipal law. So, that right had been conceded by one and all. The word "prerogative" was not used in the ordinary law. So, he thought that any emphasis laid on that point in the Regulation would look rather queer. While resorting to extradition procedure, he said, it should be considered whether the procedure was recognised under the prerogative or under the law. Otherwise, if issues like those went before courts of law, various complications might arise and if anybody contended the position, the courts would have to give a decision and several unnecessary issues might result therefrom.

THE FIRST MEMBER OF COUNCIL replied that even if such a position arose, the matter would be declared an act of State and that would be an end of all such contention.

MR. GOPALASWAMI IYENGAR thought that all such things could be avoided if a provision similar to that in Section 18 of the Indian Extradition Act was enacted here also. He hoped that at the time of introducing the Bill in the Legislative Council, all these points would receive consideration.

MR. HOSAKOPPA KRISHNA RAO who spoke next also thought that any reference in the Regulation to the rights of His Highness was unnecessary.

THE FIRST MEMBER OF COUNCIL emphasised that the British Government would look to His Highness and not to the Legislature nor to the Executive for carrying out all Treaty obligations. And any legislating about extradition should be done in a manner in which His Highness could always give effect to his obligations under the Treaty. That was the reason why Section 23 was introduced in the Bill. He also said that any legislation that the Mysore Legislature passed could not and ought not and should not appear in any way to derogate from the provisions of the Treaty, because the State itself derived its existence from that Treaty just as the Legislature itself derived its own existence.

MR. HOSAKOPPA KRISHNA RAO then said that there was another reason why Section 23 should be deleted. Proviso (ii) to Section 9 of the Legislative Council Regulation precluded any measure relating to or affecting matters governed by treaties being considered in the Council and much less in the Assembly. Why, he asked, should the Government bring a matter before the House and ask it not to discuss it? If it was a part of the Treaty, then, it would come under sub-section (ii) and formed one of the matters excluded from the cognisance of the Council. Under such circumstances only, Government had the power to frame special measures and submit them to His Highness for assent. If this provision was necessary, then, special powers must be used and a special Regulation should be passed; hence, there was no necessity just at present to refer to any such rights of His Highness in this Bill.

THE FIRST MEMBER OF COUNCIL replied that this was not a measure relating to or affecting treaty obligations. On the other hand, the object of it was to see that those treaty obligations were not affected by it. In fact, the Legislative Council would have no power to consider any suggestions which might affect the treaty obligations of His Highness. And if any proposal to affect them were brought forward in the Legislative Council, it would be *ultra vires*. The provision under reference was merely a statement of the existing position.

MR. HOSAKOPPA KRISHNA RAO pointed out that in that case any matter governed by the treaty ought not to come up before either the Representative Assembly or the Legislative Council.

THE FIRST MEMBER OF COUNCIL enquired whether or not the House were bound by the clause in the Treaty, and

if they were—as in fact they were—they must not do anything which would affect the Treaty.

MR. HOSAKOPPA KRISHNA RAO agreed that every one was bound by the Treaty, but there was one delicacy to be realized, *viz.*, that while a most popular and welcome measure was going to be enacted, Government were raising issues to discuss which members of the House did not enjoy full freedom.

THE FIRST MEMBER OF COUNCIL stated that he would agree with the speaker if he meant that the Legislative Council would be out of order if it proposed any amendment which would affect the Treaty obligations of His Highness. But the clause itself was necessary in the Bill so that it might be complete.

MR. HOSAKOPPA KRISHNA RAO said that the Legislative Council would not be competent to discuss Section 23 at all if it related to a matter governed by the treaty.

THE FIRST MEMBER OF COUNCIL thought that that question might well be left to the President of the Legislative Council to decide.

MR. W. H. HANUMANTHAPPA was of opinion that it would be better to adopt the British Indian Act without making any changes in it. Instead of that the proposed measure contained certain slight changes. For instance, the British Indian Act did not contain any provision similar to Section 23 of the proposed measure. And Section 10 of the Bill and the schedule attached to it contemplated offences other than extraditable offences.

THE FIRST MEMBER OF COUNCIL observed that all the offences mentioned in the measure were found in the British Indian Act.

MR. HANUMANTHAPPA said that even then, in copying the British Indian law, the Government should have used some discretion and eliminated offences other than extraditable ones. He also thought that there was no need to include in the Bill the rights and privileges of His Highness the Maharaja who was above all law.

MR. D. S. MALLAPPA thanked the Government for having brought up this popular legislation. He said that there were many defects in the existing law and Mysore subjects were at a disadvantage as compared with the subjects of British India. The recent decision of the High Court had opened the eyes of the public and helped the Government to take action in the matter. For that the High Court deserved the gratitude of the subjects of the State. In the proposed measure, no doubt, there was scope for reciprocity in regard to magisterial enquiry

and surrender and proper trial of the accused. All that was very good. But, in spite of all that, trouble would certainly arise if territorial prejudices influenced decisions. There might be no such difficulty so far as British India was concerned, but one could not be certain of such a position in the case of other Indian States. To get over such a difficulty, it would be better for the Government to have the power of getting back a surrendered person for being tried locally, though it might necessitate the grant of the same privilege to British India and Indian States.

THE FIRST MEMBER OF COUNCIL observed that in this matter, the British Indian Act had been followed.

MR. MALLAPPA pointed out that the British Indian Act had not been adopted in its entirety. Section 5 of the British Indian Act corresponded to Section 7 of the proposed measure. But in the latter, the first portion of Section 5 of the British Indian Act which related to political offences had not been included. It was necessary to include that also. It had been stated by the Government themselves that they could not be sure how far enquiries held by Magistrates in other Indian States could be depended upon. So also in the matter of political offences, the seriousness of an offence might vary with each country. For example, what was regarded as a political offence in India might not be so regarded in England.

Referring to Section 23 of the proposed measure, the speaker said that by the inclusion of the name of His Highness the Maharaja in the Bill, his powers would in no way be enhanced. Nor would the Bill be incomplete if the clause was deleted from it. On the other hand, a positive disadvantage would result from the retention of the clause, *viz.*, that it would enable other States to get the surrender of fugitives under that section whenever they could not do so under other sections. Subject to these observations, Mr. Mallappa supported the measure.

THE FIRST MEMBER OF COUNCIL observed that that apprehension was not warranted and it had to be remembered that other States were as likely to be aware of the existence of Article 15 of the Treaty as they would be even if the section were omitted from the Bill.

At this stage, the general principles of the Bill were put to vote and *passed* unanimously.

The Assembly rose for the day to meet again at 12 noon on Monday, 18th June 1934.